

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

JANICE HARGROVE WARREN

PLAINTIFF

v.

No. 4:19-cv-00655-BSM

CHARLES MCNULTY, et al.

DEFENDANTS

MOTION TO STRIKE PLAINTIFF’S SURREPLY

Defendants, by their attorneys, Bequette, Billingsley & Kees, P.A., for their Motion to Strike Plaintiff’s Surreply, allege and state:

1. Defendants filed their Reply to Plaintiff’s Response to Motion for Summary Judgment (Dkt. No. 48) on September 25, 2020. This was a timely and proper filing.

2. Plaintiff filed a Surreply to Defendants’ Reply to Plaintiff’s Response to Motion for Summary Judgment on October 2, 2020 (Dkt. No. 53), and then filed a substituted Surreply on October 5, 2020 (Dkt. No. 54).

3. These filings (a Surrepy and a substituted Surreply) by Plaintiff are not proper.

4. A Surreply is not authorized under the local rules. *See* Local Rule 7.2(b). Plaintiff, as the non-moving party, is authorized to file a Response to Motion for Summary Judgment, which Plaintiff indeed filed, albeit late and without leave from the Court to file out of time.

5. Furthermore, this Court’s Scheduling Order (Dkt. No. 10) expressly states as to the Motion Deadline, “**No surresponse or surreply will be permitted.**” (Emphasis added).

6. The Local Rules and the Court’s Scheduling Order are unambiguous, yet Plaintiff proceeded to file an improper pleading without leave to do so.

7. Even if Plaintiff had sought leave to file a Surreply, it is not necessary, as Defendants' Reply did not raise issues outside the record, and indeed only cited to documents and testimony already in the record, i.e. no new testimony or exhibits were included in the Response.

8. Defendants request that the Court strike Plaintiff's improper Surreply.

9. Defendants have not filed with this Motion an accompanying brief, as the argument is straightforward and simple, but Defendants stand ready to further brief the matter if requested by the Court.

WHEREFORE, Defendants respectfully pray that this Court grant their Motion to Strike Plaintiff's Surreply; and for all other just and proper relief to which Defendants may be entitled.

Respectfully submitted,

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